IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ROUBEN MADIKIANS, Plaintiff, v. AMERICAN AIRLINES ASSOCIATION OF PROFESSIONAL FLIGHT ATTENDANTS ("APFA"), et al., Defendants.	)	No. 1:04-cv-12451-JLT Judge Joseph L. Tauro

MEMORANDUM OF DEFENDANT JULIA CARRIGAN
IN SUPPORT OF MOTION TO DISMISS

Defendant Julia Carrigan submits this memorandum in support of her Motion to Dismiss. Neither of the two arguably federal causes of action in plaintiff's complaint, Counts One and Four, states a claim upon which relief can be granted. The Court should therefore dismiss those claims and decline to exercise supplemental jurisdiction over the state law claims of Counts Two and Three. While this motion is filed only on behalf of defendant Carrigan - who alone appears to have been served[1] - the grounds set forth herein apply equally to all named defendants.

[1] Defendant Carrigan executed a waiver of service of summons pursuant to Rule 4(d). The Court's docket sheet does not reflect service on any other defendant.

BACKGROUND

While defendant vigorously disputes many of the factual allegations of the complaint, there is no occasion to address those issues here. On this motion to dismiss, we accept – as we must – the facts as alleged in the complaint, and we state them here accordingly.

Plaintiff Rouben Madikians, a flight attendant employed by defendant American Airlines ("AA") and member of a collective bargaining unit represented by defendant Association of Professional Flight Attendants ("APFA" or the "Union"), brought this lawsuit against AA, APFA, an AA management employee (Kelly Cox), AFPA's Boston Domestic Chair (Carrigan), and an APFA representative (Amy Milenkovic). In his complaint, Madikians alleges that he was retaliated against, defamed, and made to suffer a hostile work environment because of his internal union efforts to investigate Carrigan's performance as APFA Boston Domestic Chair and to obtain her removal from that position. See Complaint ¶¶ 8-17. Madikians filed internal union charges against Carrigan, which APFA declined to pursue. Id., ¶¶ 16, 18, 20. He also filed a charge of discrimination with the Massachusetts Commission Against Discrimination, which was dismissed for lack of jurisdiction. Id., ¶¶ 22-24. His suit against Carrigan (in both her individual capacity and as APFA Boston Domestic Chair) and the other defendants asserts claims

of retaliation, defamation, intentional infliction of emotional distress, and breach of the Union's duty of fair representation.

ARGUMENT

Only two counts of the complaint – the retaliation and duty of fair representation claims – even arguably provide a basis for federal jurisdiction. Neither of these counts states a claim upon which relief can be granted, and both must therefore be dismissed. That being the case, the Court should decline to exercise supplemental jurisdiction over the remaining state law claims – for defamation and intentional infliction of emotional distress – and the complaint should accordingly be dismissed in its entirety.

I. COUNT ONE STATES NO CLAIM UNDER TITLE VII OR OTHER FEDERAL ANTI-DISCRIMINATION STATUTES

Count One of the complaint, titled "Retaliation," alleges that plaintiff Madikians disclosed to interested parties public documents that he believed demonstrated wrongdoing on the part of Carrigan, Complaint ¶ 25; that Carrigan retaliated by, inter alia, "causing a hostile environment," id. ¶ 26; and that AA and APFA "permitted the hostile environment to exist and continue." Id. ¶¶ 27-28.

Plaintiff does not identify what statute or other legal authority he claims was violated by the alleged "retaliation" and "hostile environment," but his use of these terms suggests

that he may have in mind Title VII or some other federal civil rights statute.[2] But neither Title VII nor any other such statute provides a legal basis for free-floating claims of "retaliation" and creation of a "hostile environment." Title VII prohibits employment discrimination "because of [the] individual's race, color, religion, sex, or national origin," 42 U.S.C. § 2000e-2(a)(1), as well as "because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter." 42 U.S.C. § 2000e-3(a). See also 29 U.S.C. § 623(a), (d) (analogous provisions of Age Discrimination in Employment Act); 42 U.S.C. §§ 12112(a), 12203(a) (Americans with Disabilities Act).

Nowhere in his complaint does plaintiff assert that the alleged hostile environment was created because of his race, color, religion, sex, national origin, age, or disability, or that the alleged retaliation was due to his having filed a charge or having engaged in any of the other enumerated protected activities. Nor does he allege facts that would

[2] Of course, to the extent plaintiff's intent is to invoke the analogous Massachusetts civil rights statute, see Mass. Gen. Laws ch. 151B, this would provide no basis for federal jurisdiction and should be treated as the state law claims of Counts Two and Three.

support an inference of such motivation. Rather, he appears to claim that the alleged retaliation was in response to his political activity within the Union. This allegation states no claim under the federal civil rights laws.[3]

II. COUNT FOUR STATES NO CLAIM FOR BREACH OF THE UNION'S DUTY OF FAIR REPRESENTATION

Count Four alleges that APFA breached its duty of fair representation by arbitrarily failing to take action in response to plaintiff's internal union complaints about the actions of defendants Carrigan and Milenkovic. Complaint ¶¶ 42-44.[4]

The duty of fair representation under federal labor law is a judicially created doctrine that the Supreme Court has held to be implicit in section 2, Fourth, of the Railway Labor Act ("RLA"), 45 U.S.C. § 152, Fourth - and other federal labor-relations statutes - which provides for certification of a union as the exclusive bargaining representative of all employees in a particular bargaining unit. Steele v. Louisville & Nashville

[3] Even if Count One stated an otherwise viable claim, it would have to be dismissed as to defendant Carrigan in her individual capacity, as only employers, employment agencies, and labor organizations - not their individual employees or agents - are subject to liability under Title VII. Gary v. Long, 59 F.3d 1391, 1399 (D.C. Cir. 1995).

[4] Count Four does not appear to be advanced against defendant Carrigan, nor could it be. Only a union, not its individual officers or agents, can be liable for a violation of the union's duty of fair representation. Forbes v. Rhode Island Bhd. of Correctional Officers, 923 F. Supp. 315, 328 (D.R.I. 1996) (citing cases).

R.R. Co., 323 U.S. 192 (1944).[5] As the Supreme Court has explained: "[A]s the exclusive bargaining representative of the employees in [the plaintiff's] bargaining unit, the Union had a statutory duty fairly to represent all of those employees, both in its collective bargaining with [the employer], . . . and in its enforcement of the resulting collective bargaining agreement . . . ." Vaca v. Sipes, 386 U.S. 171, 177 (1967). The union's duty, in such circumstances, is "to serve the interests of all [bargaining unit] members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct." Id.

Because the duty of fair representation arises out of the union's statutorily granted power as exclusive representative of all employees within the bargaining unit, it is "coextensive with its statutory authority to act as the exclusive representative for all the employees within the unit." Schneider Moving & Storage Co. v. Robbins, 466 U.S. 364, 376 n.22 (1984). Thus,

> "a union . . . can be held to represent employees unfairly only in regard to those matters as to which it represents them at all - namely, 'rates of pay, wages, hours . . . , or other conditions of employment.'" In other words, the duty of fair representation extends only to matters involving an

[5] Labor relations in the airline industry are governed by the RLA. See RLA § 201, 45 U.S.C. § 181.

> employee's dealings with his employer and ordinarily does not affect an employee's relationship with the union structure.

Kolinske v. Lubbers, 712 F.2d 471, 481 (D.C. Cir. 1983) (citations deleted; emphasis added in part). See also Bass v. International Bhd. of Boilermakers, 630 F.2d 1058, 1062-63 (5th Cir. 1980) (same); Felice v. Sever, 985 F.2d 1221, 1228 (3d Cir. 1993) ("[T]he duty of fair representation is inextricably linked to the union's status as exclusive bargaining representative in the collective bargaining process or in the administration of rights under a collective bargaining agreement."). Thus, relations between a union member and his or her union - including internal union disciplinary matters - do not fall within the duty of fair representation.[6]

Here, despite the complaint's use of the term "grievance" (which is typically associated with the labor-management dispute resolution procedure under a collective bargaining agreement), it is clear that what plaintiff filed with APFA - as to which he complains of APFA's failure to take any action - was not a grievance against management under the collective bargaining agreement between AA and APFA but rather a demand that internal

[6] Indeed, even in dealings with the employer, the duty of fair representation does not apply to the extent the individual employee is permitted under the collective bargaining agreement to defend his or her own interests without union representation. American Fed'n of Gov't Employees v. FLRA, 812 F.2d 1326, 1328 (10th Cir. 1987).

union disciplinary proceedings be instituted against Carrigan. See Complaint ¶ 16 ("Madikians filed formal charges with APFA demanding an investigation of Carrigan as an officer and agent of APFA"). Plaintiff's statement of his "grievance" in his letter to APFA of March 21, 2004 - described in paragraph 18 of the complaint - makes this abundantly clear. See Exhibit A ("I hereby invoke my rights as a member in good standing of APFA to file formal charges . . . pursuant to the APFA Constitution, Article VII - Hearings and Disciplinary Procedures . . . against Julia Carrigan as an officer and agent of APFA.").[7]

As the claim presented in Count Four thus does not fall within the bounds of the duty of fair representation, that claim must be dismissed for failure to state a claim upon which relief can be granted.

III. ABSENT ANY VIABLE CLAIM ARISING UNDER FEDERAL LAW, THE COURT SHOULD DECLINE TO EXERCISE SUPPLEMENTAL JURISDICTION OVER PLAINTIFF'S STATE LAW CLAIMS

There remain plaintiff's claims under Massachusetts law, articulated in Counts Two and Three, for defamation and

[7] The Court may - without converting this motion to dismiss into a motion for summary judgment - consider documents attached to the motion to dismiss that are referred to in the complaint and are integral to plaintiff's claim. See Menominee Indian Tribe v. Thompson, 161 F.3d 449, 456 (7th Cir. 1998); Field v. Trump, 850 F.2d 938, 949 (2d Cir. 1988); 5C Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1371, at 276 (3d ed. 2004).

intentional infliction of emotional distress. If, as we urge, the Court dismisses all of the complaint's federal claims, the assertion of supplemental jurisdiction over these state law claims would be inappropriate.

The federal supplemental jurisdiction statute provides that the Court "may decline to exercise supplemental jurisdiction over a claim" if, inter alia, "the district court has dismissed all claims over which it has original jurisdiction." 28 U.S.C. § 1367(c)(3). That is the proper course here. "When federal claims are dismissed before trial, state claims are normally dismissed as well." McInnis-Misenor v. Maine Medical Ctr., 319 F.3d 63, 74 (1st Cir. 2003); see also O'Connor v. Commonwealth Gas Co., 251 F.3d 262, 272 (1st Cir. 2001) ("Courts generally decline to exercise supplemental jurisdiction over state claims if the federal predicate is dismissed early in the litigation."); Camelio v. American Fed'n, 137 F.3d 666, 672 (1st Cir. 1998) (setting out relevant factors in exercise of court's discretion, and concluding that "the balance of competing factors ordinarily will weigh strongly in favor of declining jurisdiction over state law claims where the foundational federal claims have been dismissed at an early stage in the litigation").

Here, the litigation will – if the Court agrees with our analysis set forth above – be dismissed at the earliest possible

stage, after no more has occurred than the filing of the complaint. As no countervailing consideration is apparent, the Court should decline to exercise supplemental jurisdiction over plaintiff's state law claims.

CONCLUSION

For the reasons set forth above, the complaint should be dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Memorandum of Defendant Julia Carrigan in Support of Motion to Dismiss was served by first-class mail, postage prepaid, this 4th day of February, 2005, on counsel for plaintiff as follows:

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